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210

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In re Application of :
JOYCE et al. : DECISION ON
Application No.: 09/380,189 :
PCT No.: PCT/AU98/00127 : PETITION
Int. Filing Date: 26 February 1998 :
Priority Date: 26 February 1997 :
Attorney Docket No.: 070-011 :
For: COMBINED LIGHT SOURCE AND AIR :
PURIFIER :
:

This decision is in response to applicants' "RESPONSE TO DECISION ON PETITION TO REVIVE" filed 20 November 2002, which was accompanied by a declaration of inventors.

BACKGROUND

On 26 February 1998, applicant filed international application No. PCT/AU98/00127 which claimed a priority date of 26 February 1997, and which designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 03 September 1998. A Demand for international preliminary examination in which the United States was elected, was filed on 28 September 1998, prior to the expiration of nineteen months from the priority date (26 September 1998 being a Saturday). Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 26 August 1999.

On 26 August 1999, applicant filed a Transmittal Letter (Form PTO-1390) for entry into the national stage in the United States under 35 U.S.C. 371 along with, *inter alia*, the U.S. basic national fee and a declaration of inventors executed by two of the four joint inventors.

On 08 December 1999, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required. This notification set a one-month extendable period for reply.

On 08 August 2000, the USPTO mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to respond to the NOTIFICATION OF MISSING REQUIREMENTS mailed 08 December 1999 within the time period set therein.

On 26 February 2001, applicant submitted a PETITION FOR REVIVAL OF AN INTERNATIONAL APPLICATION FOR PATENT DESIGNATING THE U.S. ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) along with a declaration signed by three of the four joint inventors and a STATEMENT OF FACTS IN SUPPORT OF FILING ON BEHALF OF NONSIGNING INVENTOR (37 C.F.R. 1.47).

On 30 May 2001, the USPTO mailed a decision granting applicant's petition under 37 CFR 1.137(b) and dismissing applicant's petition under 37 CFR 1.47(a). Specifically, it was noted that factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort had not been provided. The decision set a two-month time period for reply.

On 07 June 2002, applicant submitted a PETITION FOR REVIVAL OF AN INTERNATIONAL APPLICATION FOR PATENT DESIGNATING THE U.S. ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) and a declaration of inventors.

On 15 October 2002, the USPTO mailed a decision dismissing applicants' petition under 37 CFR 1.137(b) without prejudice. Specifically, it was noted that the declaration of inventors filed 07 June 2002 was not in compliance with 37 CFR 1.497(a)-(b) and thus the required reply had not been provided and the conditions of 37 CFR 1.137(b) had not been met.

On 20 November 2002, applicants submitted the instant "RESPONSE TO DECISION ON PETITION TO REVIVE" which was accompanied by a declaration of inventors.

DISCUSSION

A petition to revive the present application under 37 CFR 1.137(b) must include:

- (1) The required reply;
- (2) The petition fee;
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional.

As to item (1), the declaration of inventors filed 20 November 2002 is in compliance with 37 CFR 1.497(a)-(b).

As to item (2), the petition fee of \$640.00 for a small entity was submitted on 07 June 2002.

As to item (3), the required statement was provided in the submission filed 07 June 2002.

CONCLUSION

The petition under 37 CFR 1.137(b) is **GRANTED** for the reasons set forth above.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application including according the application a 35 U.S.C. 371(c) date of **20 November 2002**.



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